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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,668	12/07/2001	Peter A. Graef	24393A	7057

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT PAPER NUMBER

3761

DATE MAILED: 01/13/2004

11

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

10/021,668

Applicant(s)

GRAEF ET AL.

Examiner

Jacqueline F Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 31-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 and 37-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election of claims 1-30 and 37-40 in Paper No. 10 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. This application contains claims 31-36 drawn to an invention nonelected with traverse in Paper No. 10. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.
3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Response to Arguments***

4. Applicant's arguments filed 10/20/03 have been fully considered but they are not persuasive.

Regarding the rejection of claims 1-7, 10, 16, 25-30, and 37-40 as being anticipated by Horney USPN 5549589, applicant's arguments are not persuasive. Applicant argues Horney does not disclose a refined blend of crosslinked and

noncrosslinked fibers. Horney discloses that in addition to the stiffened (crosslinked) cellulosic fibers, other fibers, such as nonstiffened (non crosslinked) cellulosic fibers are added. Horney further discloses the blend is well mixed using a refiner (col. 7, lines 13-19). Thus, Horney discloses a refined blend of crosslinked and noncrosslinked fibers as claimed.

Regarding the rejection of claims 17-24 as being unpatentable over Horney, applicant's arguments are not persuasive for the reasons cited above as claims 17-24 depend from claim 1.

Regarding the rejection of claims 8, 9, 11, 12, 14, and 15, as being unpatentable over Horney in view of WO 98/51251, applicant's arguments are not persuasive for the reasons cited above as these claims depend from claim 1.

Regarding the rejection of claims 13, as being unpatentable over Horney in view of WO 98/51251 and further in view of Hoskins 6059924, applicant's arguments are not persuasive for the reasons cited above as claim 13 depends from claim 1.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-7, 10, 16, 25-30, and 37-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Horney USPN 5549589.

As to claims 1, 37, and 39, Horney discloses an absorbent article **20/100** comprising a fibrous layer **24/108** comprising a refined blend (col. 7, lines 13-19) of crosslinked cellulosic fibers ('589 col. 4, lines 58-66) and noncrosslinked fibers ('589 col. 2, lines 36-51).

As to claims 2-4, Horney discloses the crosslinked cellulosic fibers are present in an amount from 20-80% based on the total dry web weight, which is included in the claimed ranges (col. 4, lines 58 through col. 5, line 1).

As to claims 5-7, Horney discloses the noncrosslinked cellulosic fibers are present in an amount from 10-80% based on the total dry web weight, which is included in the claimed ranges (col. 4, lines 58 through col. 5, line 1).

As to claim 10, Horney discloses the noncrosslinked cellulosic fibers comprise eucalyptus fibers (col. 6, lines 59-67).

As to claim 16, Horney discloses the layer comprises a wet strength agent (col. 8, lines 53-65).

As to claims 25, 38, and 40, Horney discloses an absorbent article **20/100** comprising a liquid distribution layer **24/108** and a liquid storage layer **25/106**, wherein the distribution layer comprises a refined blend (col. 7, lines 13-19) of crosslinked cellulosic fibers ('589 col. 4, lines 58-66) and noncrosslinked fibers ('589 col. 2, lines 36-51).

As to claims 26 and 27, Horney discloses the crosslinked cellulosic fibers are present in an amount from 20-80% based on the total dry web weight, which is included in the claimed ranges (col. 4, lines 58 through col. 5, line 1).

As to claims 28 and 29, Horney discloses the noncrosslinked cellulosic fibers are present in an amount from 10-80% based on the total dry web weight, which is included in the claimed ranges (col. 4, lines 58 through col. 5, line 1).

As to claim 30, Horney discloses the storage layer comprises superabsorbent material (col. 10, lines 43-46).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 17-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horney. Horney discloses the present invention substantially as claimed. However, Horney does not disclose the claimed performance characteristics. In the present case, the reference has met the structural requirements of claim 1. Regarding the examiner's interpretation of the test and performance characteristics of the instant apparatus claims, when the structure recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions are presumed to be inherent (MPEP 2112-2112.01). A *prima facie* case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim except a property or function and the examiner can not determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof as in *In re Fitzgerald*, 619 F.2d 67, 70 205 USPQ 594, 596 (CCPA 1980).

9. Claims 8, 9, 11, 12, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horney in view of Graef WO 98/51251.

As to claims 8 and 9, Horney discloses the present invention substantially as claimed. Horney discloses the absorbent composite comprises wood pulp fibers (col. 6, lines 52-67). However, Horney does not disclose the noncrosslinked cellulosic fiber comprises southern pine fiber or hardwood fibers. Graef shows that hardwood and southern pine fibers are equivalent wood pulp fibers known in the art (page 13, lines 12). Therefore, because the two fibers were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute hardwood and southern pine fibers for the wood pulp fibers of Horney.

As to claims 11, 12, and 15, see Horney col. 4, lines 58-66.

As to claim 14, Horney/Graef does not specifically disclose the noncrosslinked cellulosic fibers are present in an amount in about 15 percent of the total weight of the layer. However, Horney/Graef recognizes the ratio of noncrosslinked to crosslinked fibers can be varied and this will affect density and retention capacity (col. 11, lines 42-56 and col. 12, lines 15-36). Horney/Graef, therefore recognizes the performance of the absorbent composite is a result effective variable of ratio of the fibers (Horney col. 2, lines 12-27). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Horney/Graef with the claimed ratio of



fibers, since discovering an optimum value of a result effective variable involves only routine skill in the art.

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Horney in view of Graef as applied to claim 11 above and further in view of Hoskins USPN 6059924.

Horney/Graef disclose the present invention substantially as claimed. However, Horney/Graef do not disclose the southern pine fibers have a Canadian Standard Freeness of about 500. Hoskins discloses it is important to perform only a mild mechanical refining of the southern pine fibers presenting a Canadian Standard Freeness in the range of 700-750 for the benefit of limiting the drop in pulp freeness as refining damages the outer surface of the individual pulp fibers (col. 5, lines 22-47). It would have been obvious to one having ordinary skill in the art to modify the invention of Horney/Graef to have southern pine fibers with the claimed Canadian Standard Freeness for the benefits disclosed in Hoskins.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703)308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Jacqueline F Stephens  
Examiner  
Art Unit 3761



GLENN K. DAWSON  
PRIMARY EXAMINER

January 11, 2004